TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~339~~ 131

J. M. HENSHAW, G. W. HENSHAW, W. HENSHAW, L. VAN FOSSEN, JOHN DOE CHESTER, J. J. CLYMER, W. M. ORD, P. M. REIM, D. P. CARTER, ET AL., PLAINTIFFS IN ERROR,

vs.

GEORGE R. BISSELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JANUARY 20, 1872.

S.
Writ
Return

[redacted]

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1 *Complaint.*

In the circuit court of the United States for the district of California.

GEORGE R. BISSELL, PLAINTIFF,
vs.
J. M. HENSHAW, G. W. HENSHAW, W. Henshaw, L. Van Fossen, John Doe Chester, J. J. Clymer, W. M. Ord, P. W. Reim, D. P. Carter, John Doe, Richard Roe, William Stokes, Peter Blue, and William Orange, James Clanton, Thomas Holloway, William Wiser, Stewart Chester, Henry Frerix, and Jesse Lutz.

George R. Bissell, who is a citizen and resident of the State of Missouri, complains of the above-named defendants, who are citizens of the State of California, and for cause of complaint and action alleges as follows:

That on the 8th day of May, A. D. 1867, he, the said plaintiff, was, and still is, seized in fee, and entitled to the immediate possession of all that certain tract of land situate, lying, and being in the county of Butte, in said State of California, being part of the tract of land known as the Boga rancho, finally confirmed and patented to Thomas O. Larkin, and which said part of said rancho is described as follows, to wit:

2 Commencing at the northwestern corner of said Boga rancho, as finally surveyed and patented, and running thence southerly, along the western boundary-line thereof, two hundred chains to the southwestern corner of the rancho known as the Fernandez rancho, as the same was finally surveyed and patented; and thence at a right angle easterly, along the southern boundary-line of the said Fernandez rancho, as finally surveyed and patented, to a point on the west bank of the Feather River, and in the eastern boundary-line of the said Boga rancho, as finally surveyed and patented; and thence northerly, along the said easterly boundary-line of the said Boga rancho, to the northeastern corner of the said Boga rancho, as finally surveyed and patented; and thence at a right angle westerly, along the northerly boundary-line of said Boga rancho, as finally surveyed and patented, to the point of beginning, being one square league of land, Spanish measure.

That while so seized and entitled to the possession of said premises, the said defendants did, on the day and year last aforesaid, unlawfully, and without right or title, enter into and upon the said premises, and oust and eject the said plaintiff therefrom; and from thence hitherto have wrongfully and unlawfully detained and withheld, and still do, wrongfully and unlawfully, detain and withhold the possession of said premises from this plaintiff, to his great damage, to wit, in the sum of $20,000.

3 Plaintiff further alleges that the monthly value of the use and occupation of said premises is $500.00.

Plaintiff further alleges that the real names of defendants, John Doe, Richard Roe, William Stokes, Peter Blue, and William Orange, are unknown to this plaintiff, but when discovered, he prays that they may be inserted herein.

Wherefore plaintiff prays judgment against said defendants for the possession of said premises, and for the sum of $20,000 damages, as aforesaid, and for the further sum of $500 per month, from the said 8th

day of May, 1867, during the detention of said premises by said defendants, and for his costs of suit.

H. H. HAIGHT,
Att'y for Plaintiff.

(Endorsed:) Filed May 15th, 1867. Geo. C. Gorham, cl'k, p'r John O. Wheeler, dep.

4 *Appearance of defendants and stipulation granting time to answer.*

In the circuit court of the United States for the district of California.

GEO. R. BISSELL, PLAINTIFF,
vs.
J. M. HENSHAW ET AL., DEFENDANTS.

An appearance is hereby entered by the undersigned in the above-entitled action for all the defendants. Service of a copy of the summons and complaint is admitted; and it is stipulated that the said defendants have twenty days' time from the date hereof to answer.

San Francisco, July 19, 1867.

R. AUG. THOMPSON,
Att'y for Defendants.
HAIGHT AND TEMPLE,
Att'ys for Pl'ff.

(Endorsed:) Filed July 20th, 1867. Geo. C. Gorham, cl'k, p'r John O. Whether, dep'ty.

5 *Answer.*

In the circuit court of the United States in and for the district of California.

GEORGE R. BISSELL
v.
J. M. HENSHAW ET AL. } Answer.

Now comes J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, John D. Chester, J. J. Clymer, W'm M. Ord, P. W. Rein, D. P. Carter, John Doe, Richard Roe, W'm Stokes, Peter Blue, and William Orynge, James Clanton, Thomas Holloway, William Wiser, Stewart Chester, Henry Ferris, and Jesse Stutz, the defendants named in the plaintiff's complaint, and make answer unto the said complaint and say: The defendants, J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, John D. Chester, J. J. Clymer, W'm M. Ord, P. W. Rein, and D. P. Carter, for separate answer to the plaintiff's pretended cause of action, set forth in the complaint herein filed, as a defence to the further prosecution of the same, aver, on information and belief, that they believe to be true, that the only source of title claimed by the plaintiff herein is, by virtue of a certain deed or certain deeds from some one or more of the heirs at law or devisees of one Thomas O. Larkin, now deceased; and they aver that the said Larkin is now, and was, at the time of the institution of this suit, dead, and an administrator
6 was duly appointed by the probate court of the city and county of San Francisco, whose name is Frank R. Larkin; and that the

estate of said decedent has not been settled up, nor has the administrator been discharged from said trust; and that if the said Thomas O. Larkin had a good or valid title or right of possession in or to the said tract of land in an action as against these defendants, or any of them, the said right of possession passed to the said administrator, and until the final settlement of said estate and discharge of said administrator from his trust, he, said administrator, alone had a right to institute and prosecute this action, and not this plaintiff.

And the said defendants last above named, further answering for themselves, aver, on information and belief, that they believe to be true that the said deed or deeds so made by the heir or heirs of said Thomas O. Larkin to the said plaintiff was or were not made in good faith, with the intention of vesting the title to the premises in the complaint mentioned, in the said plaintiff; but that the same was or were only colorable for the purpose of conferring jurisdiction of this case upon this court.

The said last-named defendants, further answering, and as a distinct and separate defense to the plaintiff's pretended action set forth in his complaint, deny generally and specifically each and every allegation in the plaintiff's complaint, save and except the averment that
7 they are in the possession of the tract of land described in the plaintiff's complaint, which averment they admit in manner and form as hereinafter stated.

These defendants deny that they are now, or were at any other time prior to this date, jointly in the possession of said tract of land or any part thereof, and that they jointly retain the possession thereof or any part thereof. And said last-named defendants, severally answering as to their said possession, aver that the defendants J. M. Henshaw and G. W. Henshaw and W. Henshaw, together with one A. L. Henshaw, *had* at the time charged, and ever since, and are now, in the separate possession of so much of the said tract of land described in the complaint as included in the boundaries following, to wit, and no more:

"Commencing at the northeast corner of lot No. 2, at a stake in the Feather River, and running thence 280 rods, more or less, on the line dividing the lots Nos. 2 and 3, to a post in the center of the 'Marysville and Hamilton ;' thence running 270 rods more or less on the line of the said road to a stake dividing the lines of 'Henshaw' and 'Van Fossen;' thence running east 520 rods, more or less, on the line of Van Fossen, Chester, and Henshaw, to the Feather River; thence north with the meanderings of said river to the place of beginning," the same containing
8 850 acres of land, be the same more or less. And the said last-named defendants aver that their possession of the said last-described tract and their retention of the same was then and ever since has been, and is now, rightful, and that they are the lawful owners thereof by a good and sufficient title in fee-simple absolute, which title is paramount to plaintiff's pretended title.

And defendant J. J. Clymer, separately answering as to his possession, avers that he, the said Clymer, was, at the time charged, has ever since been, and is now, in the separate possession of so much of the tract claimed by the plaintiff as is within the following boundaries, and no more, to wit, that certain parcel or tract of land described as follows:

"Commencing at a point in the center of the 'Marysville and Hamilton' road, the same being the northwestern corner of J. M. Henshaw and brothers' land, thence running west 150 chains and 91 links to a rock, thence running with the line of the 'grant,' south 113 chains and 37½ links to a rock, thence east on the line dividing lots one and two of

the Fernandez grant 288 rods, more or less, to a post in the center of the 'Marysville and Hamilton' road, being the southwest corner of land sold to 'Van Fossen' by Henshaw; thence running north on the line of said road 113 chains and 37½ links to the place of beginning," containing the whole of lot No. 2 of the 'Fernandez grant,' being on the west
9 side of said Marysville and Hamilton road, and containing 1,700 acres, more or less. And said last-named defendant avers that his possession of said last-described tract, and his retention of the same, was then, and has ever since been, and now is, rightful, and that he is the lawful owner thereof by a good and sufficient title in fee-simple absolute, which title is paramount to plaintiff's pretended title.

And the said defendant L. Van Fossen, answering separately, avers that he, the said Van Fossen, at the time this suit was instituted was, and ever since has been, and now is, in the separate possession of so much of the tract described in the said complaint as is contained in the following boundaries, to wit, and no more:

"Commencing at a stake in the middle of the main road running from Hamilton to Lynch's ranch, near the house on said land, being the northwest corner of said land, and running due south 15 chains; thence south 12 degrees west to a stake 30 chains and 55 links; thence east to a stake 44 chains and 69 links; thence north 29 degrees east 35 chains and 42 links; thence north 74½ degrees west 57 chains to the place of beginning, containing 204 acres of land."

And the said last-named defendant Van Fossen avers that his possession of said last-described "tract of land," and his retention of the same, was then, and ever since has been, and now is, rightful, and that he is the lawful owner thereof by a good and sufficient title in
10 fee-simple absolute, which title is paramount to plaintiff's pretended title.

And said defendant John D. Chester, separately answering as as his possession, avers that he, the said Chester, was, at the time charged, has ever since been, and now is, in the separate possession of so much of the tract claimed by the plaintiff as is within the following boundaries, to wit, and no more:

"Beginning at a stake on the west bank of Feather River and running thence west 226 rods to a stake, thence east 216 rods to a sycamore-tree on the west bank of Feather River, thence down the west bank of said river to the place of beginning, containing 160 acres."

And said defendant avers that his possession of said described "tract of land" and his retention thereof, was then, has ever since been, and now is, rightful, and that he is the lawful owner thereof, by a good and sufficient title in fee-simple absolute, which title is paramount to plaintiff's pretended title.

And the said defendant P. W. Rein, separately answering as to his possession, avers that he, the said Rein, was at the time named in the complaint, has ever since been, and now is, in the separate possession of so much of the tract claimed by the plaintiff as is described in the following boundaries, to wit, and no more:

"Commencing at a white-oak on the west bank of Feather River, marked 'H. M.,' being the 'corner' of lots 2 and 3, in range three
11 east, township 18 north, thence running west along the boundary-lines of said lots 2 & 3, to the west boundary of the Fernandez grant; thence north 100 rods to a stake; thence east parallel to the first-named line to the Feather River; thence south along the bank and with the meanderings of said river to the place of beginning, containing five hundred acres of land, more or less."

And said last-named defendant, Rein, avers that his possession thereof and retention thereof was then, has ever since been, and now is rightful, and that he is the owner thereof by a good and sufficient title in fee-simple absolute, which title is paramount to plaintiff's pretended title.

And defendant William M. Ord, separately answering as to his possession, avers that he, the said Ord, was at the time charged, ever since has been, and now is, in the separate possession of so much of said tract described in plaintiff's complaint as is embraced within the following boundaries, to wit, and no more:

"Commencing at a stake on the west bank of Feather River, marked 'F' '14,' and running west 192 chains 80 links, to a stake marked 'F' '13,' said line being the southern boundary of the Fernandez grant; thence north 53 chains and 25 links, to the land of Henshaw; thence east 233 chains, to the west bank of Feather River; thence, following the meanderings of said river, to the place of beginning, containing 1,111 acres of land, more or less."

12 And that said possession is now, and was at the time this suit was instituted, rightful, and was derived from one Pacificus Ord, who was then and now is the owner of said tract of land by a good and sufficient title in fee-simple absolute, which title is paramount to plaintiff's pretended title.

And defendant D. P. Carter, separately answering as to his possession, avers that he, the said Carter, was, at the time of the institution of this suit, and is now, in the rightful possession of so much of the tract described in the complaint as is not included in the tract hereinbefore severally described as being in the possession of his codefendants, and that the tract so described is embraced in the limits following, to wit, and no more:

"Commencing on the west bank of Feather River, adjoining and north of the land of P. W. Rein, and running thence west 222 chains and 91 links; thence north 100 rods; thence east to Feather River; thence south, following the meanderings of said river, to the place of beginning, containing five hundred acres of land, more or less."

And the said last-named defendant, Carter, avers that his possession thereof and retention thereof was then, has ever since been, and now is, rightful, and that he is the owner thereof by a good and sufficient title in fee-simple absolute, which title is paramount to plaintiff's pretended title.

And the said last-named defendants, further answering, aver that they are now, and have been for more than five years imme-

13 diately prior to the commencement of this action, and next preceding the date thereof, to wit, since the 14th day of October, 1857, in the rightful and lawful possession of said lands, as hereinbefore set forth, and all of which comprise the lands in the plaintiff's complaint set forth, by virtue of a patent duly issued by the Government of the United States of America, upon a confirmed "grant" derived from the Mexican government; and that the said possession has been since the 14th day of October, 1857, and still is, adversary to the pretended right of possession claimed by the plaintiff in his said action herein.

And the said last-named defendants, further answering, aver that the cause of action stated in the plaintiff's complaint against the defendants did not accrue within five years next before the commencement of this action.

And the said last-named defendants, further answering, aver that the title and possession claimed and held by them as hereinbefore set

forth is paramount to the claim, if any, of title by or through the said Thomas O. Larkin, deceased, to the said tract, and if the plaintiff claims any title to the same from or through the said Thomas O. Larkin, it is subject, subsequent, and in subordination to the paramount title under which these defendants hold and claim their several tracts of land, as hereinbefore set forth.

Wherefore they pray judgment for their costs, and that plaintiff take nothing by his action.

14 And the said defendants, James Clanton, Thomas Holloway, William Wizer, (or Wiser,) Stewart Chester, Henry Ferris, and Jesse Stutz, (or Lutz,) and the defendants represented in said complaint by the names of John Doe, Richard Roe, W'm Stokes, Peter Blue, and William Orgugne, (or Oruge,) whose real names are alleged to be unknown to said plaintiff; and the said unknown persons, when known and made parties to this action, for a separate answer for themselves to the allegations of the said complaint, aver that they disclaim any right, title, or interest in the lands mentioned, except as tenants; and they further allege that any interest or possession held by them, or either of them, in said lands, or in any portion thereof, is held by each of them severally as tenants of some one or more of the other parties defendant hereto, whose titles and interest in said lands and premises are hereinbefore specifically set forth.

Wherefore they, the said last-named defendants, pray judgment that the said complaint may be dismissed as to them, and judgment of nonsuit be entered in their favor.

R. AUG. THOMPSON,
Att'y for Def'ts.

SAN FRANCISCO, *Aug.* 21*st*, 1867.

(Endorsed:)
Service of copy admitted this day, Aug. 23, 1867.
HAIGHT AND TEMPLE,
Atty's for Pl'ff.

Filed Aug. 23d, 1867. G. C. Gorham, cl'k, p'r Wheeler, dep.

15. *Amended and supplemental answer.*

In U. S. circuit court for the district of California.

GEO. R. BISSELL, PL'FF, *v.* J. H. HENSHAW ET AL., DEF'TS. } Amended and supplemental answer of defendants.

Now come the defendants in this action, by their counsel, R. Aug. Thompson, and for an amended and supplemental answer, by leave of the court, answer further, and aver and say:

That, early in the year 1851, they and their ancestors, James L. Henshaw and Robert B. Moore, and others their predecessors and assigns, settled in good faith, with their families, upon the tract of land claimed by plaintiff.

That then the said tract of land was wholly vacant and unoccupied; that they had no notice, then or since, before the commencement of this action that said tract was claimed by plaintiff or those under whom he pretends to claim.

That they were then informed and believed that the said tract was the public land of the United States; that they immediately thereafter commenced improving and cultivating a large part of said tract; that, within a year thereafter, their said ancestors, assigns, and prede-
16 cessors had built extensive and valuable dwellings, houses, fences, and other improvements, of the value of $20,000, upon the tract of land claimed by the plaintiff in this action; that thereafter, in the year 1852, they and their said ancestors, James L. Henshaw and Robert B. Moore, assigns and predecessors, took the usual preliminary steps as settlers upon the public lands of the United States, to secure their rights as such by filing petitions, notices, and declarations in the proper United States land-office in California; that thereafter, in or about the month of July, 1855, they first learned that the said tract upon which they had settled as aforesaid was claimed by certain persons under Mexican grant to Dionicio and Maximo Z. Fernandez.

That, at or about this time, they first learned that the said claim of said Fernandez had, on the day of , A. D. 1852, been presented for confirmation to the United States land-commissioners for California, and that the same had been confirmed by said commissioners on the 17th of July, A. D. 1855.

That thereafter, on the 5th of November, 1855, the said James L. Henshaw and Robert B. Moore purchased of said claimants of said Fernandez grants, confirmed as aforesaid, for a large and valuable consideration, the undivided five-sixths parts of said claim, of the extent of four square leagues; that, before, at, or about the same time, the said defendant, Pa. Ord., purchased, for a valuable consideration, the one undivided sixth part of the said tract; that the conveyances for the
17 same were duly made, delivered, and recorded shortly thereafter in the county of Butte, California, where the land was situated; that, before said purchases of said tract of land, they were informed by Thomas O. Larkin, from whom, as defendants are informed and believe, the plaintiff pretends to claim title, that the Fernandez claim was good and valid, and did not conflict with his claim, called the Boga or Flugge rancho; that the Boga grant, which he claimed had been presented to the said land-commissioners for confirmation on the 24th of March, 1852; that it had been confirmed by the said land-commissioners on or about the 17th of July, 1855; that it had been surveyed under an order of the said land-commissioners in December, 1852; that it was located and surveyed by the United States surveyor-general for California, Thomas D. King; that he was in possession previous to said survey; that it did not cover any part of the tract of land granted and confirmed to the Fernandez; that his grant of land was all lying to the north of said Fernandez grant; that he did not own or claim any part of the tract of land which they had settled upon as aforesaid; that, if they bought the Fernandez title, they would secure their homes; that he was then in the actual possession of the tract of land called the Boga rancho in virtue of his title, location, survey, and confirmation by the land-commissioners; that they might have the said Fernandez grant located anywhere on the public lands below his said survey and possession on the west bank of the Feather River.

18 Defendants, further answering, aver that the said claim to the said Fernandez grant, presented and confirmed as aforesaid by said land-commissioners, was finally confirmed by the United States on the 2d day of March, A. D. 1857, by the dismissal of the appeal by the Attorney General of the United States and the final order of the United States district court for the northern district of California, made on the

9th day of March, A. D. 1857, dismissing the appeal; that, shortly thereafter, the said purchasers of said Fernandez grant applied to the United States surveyor-general for California for a final survey of said grant; that thereafter, on the 29th day of May, A. D. 1857, the said surveyor-general made and approved a final survey of said Fernandez grant; that this said survey located all the land to the south and below the said location and survey of said Boga grant, claimed by said Thomas O. Larkin on the Feather River, in the county of Butte.

That the said survey of said Fernandez grant was thereafter transmitted by said U. S. surveyor-general for California to the Commissioner of the Land-Office.

That thereafter, on the 14th of October, 1857, the said Commissioner duly issued a patent of the United States for the said tract of land, called the Fernandez grant, of the extent of four square leagues, so finally confirmed and surveyed as aforesaid.

That said patent was duly delivered to said purchasers on or about the 17th day of October, 1857, and that thereafter the said patent was duly recorded in Butte County, California, on the 7th of January, 1858.

19 And defendants, further answering, aver that thereafter, on the day of , the said tract of land, patented as aforesaid, was, by a decree of the district court of the judicial district of the State of California, in and for the county of Butte, partitioned and divided between said purchasers, Henshaw, Moore, and Ord.

And defendants, further answering, aver that said Thomas O. Larkin well knew that the said Henshaw, Moore, and Ord, would, and had applied, after the said final confirmation of said Fernandez grant, to the said surveyor-general for California for a final location and survey of their said grant; and he well knew, and had notice at the time, that the said U. S. surveyor-general was surveying, and had located and surveyed, the said grant on the west bank of Feather River, and that the league of land now claimed by pl'ff, under said pretended Boga grant, was all embraced in said "survey," and he well knew, and had notice, that said purchasers thereafter intended, and had applied to the Commissioner of the Land Office, for a patent under said survey, and with a full knowledge of all the said facts, he never, in any way or at any time opposed or objected to the same; but, on the contrary, assented to said location survey, and patent of said Fernandez grant, made and issued as aforesaid, and declared often, before and since the issuance of said patent, that he did not own or claim any part of the said

20 grant of land confirmed and patented as aforesaid.

And defendants, further answering, aver that they are informed and believe, and they consequently do so allege, that the said Thomas O. Larkin, from the year 1852, exercised acts of complete ownership over the said tract of land called the Boga rancho, located and surveyed by the said United States surveyor-general, in December, 1852, as aforesaid, and that he paid taxes thereon; and that he sold and conveyed to certain persons certain parts thereof, for a large and valuable consideration, on or about the 4th of April, 1857.

And defendants, further answering, aver on information and belief, that the said Thomas O. Larkin filed a petition before the said land-commissioners on the 24th of March, 1852, as aforesaid, asking confirmation of his pretended claim of said Boga rancho, and that it was confirmed by said commissioners on or about the 17th of July, A. D. 1855, and that thereafter an appeal was taken by the United States to the

U. S. district court of the proper jurisdiction, and that said appeal was thereafter, on or about the 24th of December, 1856, dismissed by the Attorney-General of the United States, and that thereafter, on the 9th of February, 1857, the said United States district court ordered the said appeal to be finally dismissed; and that the said claimant could proceed under said decree of confirmation of said land-commissioners, as under a final decree, and that thereafter the said Thomas O. Larkin did proceed under said final decree, and did apply to the said United States surveyor-general for California for a final survey of said
21 finally-confirmed claim, and that thereafter, on or about the 26th day of March, A. D. 1858, the said surveyor-general made and approved a survey of said finally-confirmed claim, and that said claim was finally located and surveyed as aforesaid, on the west side of said Feather River, in said Butte County, beginning on the south, near the town of Thompson's Flat, and running thence up and down, along said west bank of Feather River, several leagues according to said decree of said land-commissioners, and within the extreme limits of said pretended grant.

And defendants, further answering, aver that the said final survey, under said final decree, of said claim of said Thomas O. Larkin, did not include any part of the said four leagues of land finally confirmed, surveyed, and patented as aforesaid to the said Fernandez'.

And defendants, further answering, aver that the said survey of the said claim of said Thomas O. Larkin, was final and conclusive, as between the said Thomas O. Larkin and the United States, and that the said Thomas O. Larkin should have obtained a patent thereon, and, if he failed to obtain a patent, it was because of his own fault and neglect.

And defendants, further answering, aver that they are informed and believe, and therefore do allege, that the said Thomas O. Larkin illegally and wrongfully allowed and procured the said United States surveyor-general for California, on or about the 4th day of Octo-
22 ber, A. D. 1859, to make another and second location and survey, after said final confirmation, of the said claim for the Boga rancho, and that the said second survey of the said Boga rancho located the whole thereof, of the extent of five leagues, beginning on the west side of said Feather River, at the lower and southern line of the said Fernandez grant, located and surveyed, and patented as aforesaid; and running thence southerly, and down along said west bank of said Feather River, five leagues, with an average depth, back and west, of one league, and which said second survey did not include any part of said Fernandez grant, as bounded and described in said patent of the 14th of October, 1857.

And the defendants, further answering, aver, on information and belief, that the said Thomas O. Larkin might, notwithstanding the said first final survey, have obtained from the United States a patent for the land embraced in the said second survey, but for his wrongful neglect, delay, and want of diligence in the matter.

And defendants, further answering, aver, on information and belief, that thereafter, on or about the 7th of December, 1859, certain "ex parte" proceedings were commenced in the said United States district court, founded upon suggestion and motion of the acting U. S. district attorney of the United States district court aforesaid, for the northern district of California, that the survey in the case of Thomas O. Larkin vs. the United States was erroneous, and which said proceedings
23 terminated in said court on or about the 26th of June, 1865, and

by which said proceedings the second survey aforesaid, after said final confirmation, was set aside as erroneous, and an order or decree made directing the said second survey to be reformed and corrected. That said order or decree directed the said surveyor-general of the United States as follows:

"The southern line to be run as indicated in the diseño in the espediente marked 7 "S. D. K.," and authenticated by the signature and rubric of Micheltorena by the natural objects thereon represented, and thence northwardly, along the Feather River, five leagues, and no more."

And defendants, further answering, aver that thereafter the said surveyor-general attempted to reform said second survey in obedience to said order or decree of said United States district court, and that thereafter said district court, on or about the 13th day of January, A. D. 1863, approved said reformed survey; that thereafter, on the 15th of January, 1863, an appeal on behalf the United States was granted upon said proceedings of said district court, and that, on the 26th day of June, A. D. 1865, the mandate of the supreme court was filed dismissing the appeal from the decree of the district court of January 15th, 1863, and that thereafter a patent was issued by the United States, dated the 5th of October, 1865, upon said decree, in the name of Thomas O. Larkin, for a tract of land which included one league on the south of the said Fernandez grant, as finally confirmed, located, surveyed, and patented on the 14th of October, 1857, as aforesaid.

24 And said defendants, further answering, aver, upon information and belief, that the said ex parte proceedings in said district court commenced as aforesaid on the 7th of December, 1859, were wrongfully and fraudulently instigated and carried on solely in the interest of certain third persons, who had squatted upon and were then in the adverse possession of the said tract of land as it had been located and surveyed the second time by the said United States surveyor-general for California, on the 4th day of October, 1859, as aforesaid, and that it was by the said fraudulent and wrongful instigation and intervention in said proceedings in said district court, and the wrongful and fraudulent proceedings and procurement of said third persons therein, not proper parties, that the said final decree of said land-commissioners was wrongfully changed by said district court, and the said finally-confirmed and finally-located claim of the said Thomas O. Larkin was thus wrongfully located in a totally different place and surveyed in a different manner from that required by said final decree of said land-commissioner of the 17th of July, 1855, and finally located and surveyed in accordance with said final decree by said surveyor-general on the 26th day of March, A. D. 1858, as aforesaid.

And defendants, further answering, say that they are advised by counsel, and so aver, that the said ex-parte proceedings of the said

25 district court, which commenced as aforesaid, on the 7th of December, 1859, were null and void, and that the said district court had no jurisdiction over the subject-matter, and that its action, orders, and decrees therein were ineffectual as to all persons not parties thereto.

And defendants, further answering, aver that they, their ancestors, predecessors, or assignors, had no notice of said ex-parte proceedings, or of said second survey of said surveyor-general, or of the aforesaid proceedings in said court, which were commenced on the 7th of December, A. D. 1859, as hereinbefore referred to and set forth, and that they were never summoned to appear therein, and they never did appear therein, and they were never parties thereto, and that they had no notice of the said reformed survey, made by said surveyor-general, under the

said ex-parte proceedings of said United States district court, as aforesaid, and they never appeared and never were parties thereto; and said second survey and said proceedings and said reformed survey are null and void, and the patent of the United States issued thereon, of the date of the 5th of October, 1865, is null and void, in so far as they conflict with defendants' rights, and include the land omitted under their final survey and patent of the 14th of October, 1857, as aforesaid.

And defendants, further answering, aver that if the said Thomas O. Larkin, or his pretended grantor, Flugge, ever had any right or title under the Mexican government to the land finally confirmed to
26 him as aforesaid, which is denied, the same was abandoned by said Flugge before the Mexican authorities granted the said tract of land to the said Maximo and Dionicio Fernandez, and the said Flugge never performed any of the conditions of his pretended grant, and he never petitioned for or had it segregated or located by the Mexican authorities, and he declared he never intended to do so, before, at, and about the time the said grant was made to said Fernandez as aforesaid; and he declared further that he did not and never had any claim to the land which the brothers Fernandez had petitioned for, and which was granted them as aforesaid.

And defendants, further answering, aver that at the time Fernandez petitioned the Mexican authorities for the said grant of four leagues on Feather River, described in their petition, the same was wholly vacant and unoccupied public land, which had never been settled or occupied, and which remained so until defendants and their ancestors, predecessors, and assignors first settled there as aforesaid.

And defendants, further answering, aver that they, and their ancestors, predecessors, and grantees have been in the quiet, continuous, and adverse possession of the premises described in plaintiff's complaint, under a grant from the Mexican government, finally confirmed by the United States, or its legally-constituted authorities, for more than five years next before the commencement of this action by said plain-
27 tiff, and they claim title to said premises under and by virtue of the statute of limitations in such cases made and provided.

And defendants, further answering, aver that they claim title to the land described in plaintiff's complaint, by continuous and adverse possession of the same as aforesaid for more than seventeen years before the commencement of this action by plaintiff, and by continuous and adverse possession under title by purchase, as aforesaid, for more than twelve years next before the commencement of this action by plaintiff.

And defendants, further answering, aver, upon information and belief, that the plaintiff herein claims the land described in his complaint, under a grant from the Mexican government; and they further aver that the said grant was finally confirmed by the United States, or its legally-constituted authorities, more than five years before the commencement of this action; and the plaintiff's alleged cause of action is barred by the statute of limitations in such case made and provided.

And defendants, further answering, aver that plaintiff's claim to the land described in his complaint is not valid, and he has no valid right, title, or claim to the said premises, and his said claim and said pretended titles are null and void, and of no validity, and they are a cloud upon said defendants' valid titles, and greatly depreciate their value,
28 and the value of the said lands of defendants claimed by plaintiff in his said complaint.

Wherefore the defendants pray that the said reformed survey of the said United States surveyor-general, and the patent of the United

States, of said 5th day of October, 1865, issued thereon, by which said defendants' title as aforesaid has been clouded, may be declared to be null and void, so far as they conflict with said defendants' final survey, and the said patent of the 14th of October, 1857, and that plaintiff may be declared to have no valid right, title to, or claim to, the said premises described in his complaint. And defendants further pray that plaintiff may be decreed to quit claim, and that the cloud now resting upon defendants' title may be forever removed, and adjudged null and void.

And defendants further pray for all such other and general relief as may be just and equitable, and for costs in this proceeding incurred.

R. AUG. THOMPSON,
Att'y for Def'ts.

(Endorsed:) Filed April 2, 1868. Geo. E. Whitney, cl'k, by A. D. Smith, D. C.

Received a copy of the within, and consent to its being filed as an amended and supplemental answer, reserving the right to reply.

HAIGHT AND TEMPLE, *for* Def't.

APRIL 1ST, 1868.

29 *Stipulation waiving jury.*

In the circuit court of the United States, district of California.

GEORGE R. BISSELL, PLAINTIFF,
v.
J. M. HENSHAW & AL., DEFENDANTS.

It is hereby stipulated that a jury in the above-entitled action be waived, and that the same be tried before the court.

HAIGHT AND TEMPLE,
Att'ys for Pl'ff.
R. AUG. THOMPSON,
Att'y for Def'ts.

(Endorsed:) Filed June 13, 1870. Geo. E. Whitney, clerk, by L. S. B. Sawyer, D. C.

30 *Stipulation as to value of premises.*

U. S. circuit court, district of California.

BISSELL
v.
HENSHAW & AL.

It is hereby stipulated and admitted that the value of the premises in controversy in the above-entitled action exceeds in value the sum of five thousand dollars, ($5,000.00.)

HAIGHT AND TEMPLE, AND
CHA'S H. SAWYER,
Att'ys for Pl'ff.
R. AUG. THOMPSON,
Att'y for Def't.

(Endorsed:) Filed 20 March, 1871. L. S. B. Sawyer, clerk.

31 *Findings.*

In the circuit court of the United States, of the ninth judicial circuit, district of California.

GEORGE R. BISSELL
v.
J. M. HENSHAW & AL.

A jury having been waived by a stipulation of the parties, in writing, duly filed, this cause came on to be tried by the court, without a jury, on the 16th and 17th days of August, 1870, and, after hearing the testimony and the arguments of counsel, the court being sufficiently advised, finds the following facts and conclusions of law, viz:

On the 24th day of March, A. D. 1852, Thomas O. Larkin, pursuant to the provisions of the act of Congress approved on the third day of March, 1851, entitled "An act to ascertain and settle private land-claims in the State of California," as claimant, filed his petition with the board of land commissioners under said act, in which he claimed a confirmation of his title to a tract of land called "Boga," containing four square leagues of land, situate in the county of Butte, in the State of California, said claim being founded on a Mexican grant, purporting to
32 have been made by Governor Micheltorena to Charles William Flugge on the 21st day of February, A. D. 1844. Said grant purported to have been made upon a petition of said Flugge, presented and bearing date on the 22d of December, A. D. 1843, and said grant also purported to have been duly confirmed by the departmental assembly on the 13th day of June, A. D. 1845.

The annexed exhibit, marked "A," is a copy of the translation of the espediente of said grant, and a copy of the diseño annexed thereto, presented with said petition of said Larkin, and filed with the said commission in said cause.

On the first day of May, 1852, and prior to the confirmation of said grant by said board, on the application of said claimant, Larkin, the said board of land commissioners ordered a preliminary survey to be made, under the direction of the United States surveyor-general for California, of the said "Boga" rancho, which order is in the words following, to wit:

"For the purpose of determining, with precision and certainty, the limits and boundaries of the land claimed by Thomas O. Larkin, in his petition, No. 129, pending before the commissioners, it is, on motion of the counsel for the claimant, ordered that an initiatory survey, under the superintendence of the United States surveyor-general of California, be made of the land known by the name of Flugge's rancho, to the extent of 'five sitios de ganada mayor,' on the westerly side of Feather River, and stretching along the said river from 39° 33′ 45″ north
33 latitude to 39° 48′ 45″, also of north latitude, as is represented in the plan accompanying the respective espediente, locating the said quantity of five sitios according to the claim of said Larkin, and having reference to the sketch or plan annexed to the said espediente, but in such manner as to confine such location within the said limits, and to include in the survey, so to be made, the said quantity of five sitios. But this order is not in any manner to determine, as against the United States, either the question of title, the construction of the grant, the location, boundaries, or extent of the land to which the claimant may be entitled. Filed in office May 1, 1852."

On the 15th day of December, 1852, G. D. King, U. S. surveyor-general for California, returned to and filed with said board of land commissioners a survey made in pursuance of said order, which survey is represented on the annexed plat or map designated No. 1, Sawyer J., and the portion of said map marked 1st in red figures and colored light brown, represents the land claimed as located by said survey.

The said survey does not embrace any of the land in controversy in this action.

On the 17th day of July, A. D. 1855, the said board of land commissioners rendered a decree confirming said claim of said Larkin; which decree is in the words following, to wit:

34 "In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid; and it is therefore decreed that his application for a confirmation thereof be allowed.

"The land of which confirmation is hereby given is called "Boga," situate in the county of Butte, and contains five square leagues, and to be located in accordance with the calls of the grant and the boundaries as delineated on the map accompanying the espediente, to which reference is made. The southern boundary-line indicated on the said map by the line marked 39° 33′ 45″ north latitude, and the northern boundary by that marked 39° 48′ 45″ north latitude, being on the west side of Feather River, and to be of sufficient width to contain five square leagues."

An appeal having been taken from said decree to the district court of the United States for the northern district of California, the Attorney General of the United States, on the 24th day of December, 1856, gave notice that the appeal would not be further prosecuted, and thereupon the United States district attorney for the northern district of California filed a stipulation, signed by both parties, for the dismissal of said appeal, in pursuance of said notice, and the said district court, at a stated term thereof, on the 9th day of February, 1857, in pursuance thereof, entered an order, by which it was "ordered, adjudged, and decreed that the appeal pending in this court be dismissed, and

35 that the claimant have leave to proceed under the decree of said land commission heretofore entered in his favor, as under a final decree."

On the 26th day of March, 1858, J. W. Mandeville, U. S. surveyor-general for California, approved a survey of said grant called Boga, which had before been made under his direction and supervision, and which he supposed he had made in accordance with said decree of confirmation rendered by said land commissioners; said survey, so made and approved, is represented on said map No. 1, hereto annexed and marked 3rd in green figures, the boundaries thereof being shaded green on said map, which said survey very nearly corresponds with said preliminary survey, and said survey does not include any of the land in controversy.

Shortly after this survey was made, a duly certified copy, with an authentic certificate of approval, was transmitted by said Mandeville to said claimant, Thomas O. Larkin. Said survey was transmitted by said Mandeville to the Commissioner of the General-Land Office at Washington for his approval. The said Commissioner of the General Land-Office set aside said survey, as being, in the view of said Commissioner, erroneous, and not in conformity with the said decree of the board of land commissioners; and the said Mandeville was directed to make a new survey and location, in pursuance of instructions given in accordance with the said Commissioner's construction of said final

36 decree, which letter of instruction is in the words and figures following, to wit:

"GENERAL LAND-OFFICE, *April 2d*, 1859.

"SIR: This office has had under examination the survey approved by you on the 26th March, 1858, of the "Boga" claim, finally confirmed to Thomas O. Larkin. In this survey the prominent natural objects referred to in the grant, and delineated in the 'map accompanying the espediente,' have been disregarded in locating the claim, and certain lines of latitude named in the grant and decree have been adopted as controlling calls, and the claim located accordingly. The reference in the grant and decree to these lines of latitude is understood by this office to be merely descriptive of the 'plan' or 'map' accompanying the 'espediente,' and as having no bearing upon the question of location. The map (diseño) itself is a plain one, and the natural objects represented thereon, to wit: 'Feather River' 'Arroyo Honcut' and 'Los Picos, are, in our opinion, amply sufficient to determine the locality. The survey is rejected, and the case remanded for re-examination, and you are hereby instructed to cause a new survey to be made in accordance with the grant and decree. In locating the claim, you will be
37 governed by the natural objects before mentioned, as delineated on the map, (diseño,) and will give to it the form and proportions shown by said map and required by the decree of confirmation.

"Very respectfully, your ob't s'v't,

"THOS. A. HENDRICKS,

"*Commissioner.*

"J. W. MANDEVILLE,

"*U. S. Surveyor-General, San Francisco, Cal.*"

Thereupon the said Mandeville caused to be made a new survey, in accordance with said decision and instructions of the said Commissioner of the General Land-Office, as he understood them, and approved the same on the 4th day of October, 1859, which said survey is represented on said annexed map or plat No. 1, and marked thereon "4th" in blue figures, the boundaries of said survey being shaded blue on said map; and said survey does not embrace any of the land in controversy in this suit.

Afterwards, on the petition of the United States, by the acting United States district attorney for the northern district of California, suggesting that said last-mentioned survey, approved October 4, 1859, is erroneous, the said district court, at a stated term thereof, on the 7th day of November, 1859, ordered the United States surveyor-general
38 for California to return said survey into court, which order is in the words and figures following, to wit:

"THE UNITED STATES. }
"*v.* } No. 358. L. C. 129. Flugge's rancho.
"THOMAS O. LARKIN. }

"It being suggested to the court that the survey of the land claimed in this case, made under final decree, and approved by the U. S. surveyor-general for California, is erroneous; on application of Tully R. Wise, esq., acting U. S. attorney, it is ordered that the said surveyor-general return to this court a certified copy of the plat of said approved survey, and that the United States be allowed fifteen days from and after the return thereof, to file exceptions thereto; and it is further ordered that a certified copy of this order be served upon the said surveyor-general for his information."

Which order was duly served on J. W. Mandeville, U. S. surveyor-general for California, on the 8 day of November, 1859.

On the 7th day of December, 1859, the U. S. surveyor-general for California, in pursuance of said last-named order, returned said survey into said district court, by filing a certified copy of the plat thereof in said court; and thereafter, on the 22d day of December, A. D. 1859, the United States, by the acting U. S. district attorney for the
39 northern district of California, filed exceptions to said survey, and prayed that said survey might be set aside, and that a new survey be made, in conformity with the provisions of said decree of confirmation, which exceptions are in the words following, to wit:

U. S. district court.

"THE UNITED STATES
"*v.*
"THOMAS O. LARKIN. } No. 358. L. C. 129. Flugge's rancho.

"And now come the United States, by their acting attorney, Tully R. Wise, and except to the official survey made of the land finally confirmed herein by the U. S. surveyor general for California, under final decree, a certified copy plat whereof was filed in this court, pursuant to its order, on December 7, 1859.

"And the United States aver—

"1st. That the said survey is erroneous, because it locates the land confirmed outside the limits fixed by said final decree.

"2nd. That the said survey is erroneous, because, if the quantity of land granted and confirmed be included within larger exterior boundaries, the said survey does not include certain portions of said land elected by the claimant, which election was determined by sales
40 made by him during the pendency of his claim before the late board of land commissioners.

"3rd. That the said survey is erroneous, because four leagues of the tract granted to Flugge was afterwards denounced by the brothers Fernandez, who obtained a grant therefor, by denouncement, from the Mexican government, in 1846, filed their claim therefor before the board of U. S. land commissioners, by whom it was confirmed; also confirmed on appeal by the U. S. district court; further appeal dismissed by the United States; a survey made under final decree, and a patent from the U. S. duly issued upon said survey, which said four leagues, so surveyed and patented to Fernandez' brothers, is a part of the same land confirmed to the claimant herein, and should have been included within his survey; whereas said survey of the lands confirmed herein excludes the said four leagues patented to Fernandez, and includes five other leagues to the south, instead of including the said four leagues, and but one other league to the south, to make up quantity.

"4th. That the said survey is erroneous, because the said five leagues granted and confirmed were to be located within exterior boundaries containing a much greater area of land, the location of which five leagues was determined by the location of the Fernandez grant
41 as aforesaid; whereas the said survey includes land to the south, which has been settled upon and occupied under the authority of the United States, and was so settled and occupied prior to the date of the making of said survey.

"Wherefore, the United States pray that the said survey be set aside as erroneous, and that the said surveyor-general be ordered to cause a

resurvey of said land, to be made in conformity with the true intent and meaning of said final decree.

"San Francisco, Dec. 22, 1859.

"TULLY R. WISE,
"*Act'g U. S. Att'y.*"

On the 27th day of August, 1860, the said district court issued a monition in said cause, which monition is in the words and figures following, to wit:

"UNITED STATES OF AMERICA,
"*Northern District of California, ss:*

{SEAL OF THE U. S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.}

"The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

"Whereas, objection has been made to the official survey and location of the land finally confirmed, in case No. 358, to Thomas O. 24 Larkin, known as Flugge Rancho, or Boga, and situated in the county of Butte, in said district:

"Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 3rd day of October, 1860, at 11 o'clock a. m., if that day shall be a day of jurisdiction, and, if not, on or before the next Wednesday thereafter, then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ, do you then and there make return thereon.

"Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 27th day of August, A. D. 1860.

"W. H. CHEVER, *Clerk.*"

Which monition was returned by the United States marshal on the 3d day of October, 1860, with the following return indorsed thereon, to wit:

"The within monition was received by me on Monday, the 27th day of August, 1860, and, in obedience thereto, I have given due notice, as therein commanded, by causing the publication of said notice for consecutive Wednesdays in the San Francisco Her- 43 ald, commencing on the 29th day of August, 1860; and for 4 consecutive Saturdays in the Butte Democrat, a paper published nearest the land, commencing on the 1st day of December, 60.

Dated San Francisco, Aug. 27th, 1860.

"P. L. SOLOMON,
"*U. S. Marshal.*"

said monition was in fact published on Wednesday of each week r four consecutive weeks in the San Francisco Herald, commencg on August 29, 1860.

Afterwards, on said 3d day of October, 1860, on motion of the attorney of the United States, proclamation was duly made, the United States and claimant appearing, and no other parties appearing, it was ordered that default of all parties not appearing be entered, which order is in the words and figures following, to wit:

"At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the third day of October, in the year of our Lord one thousand eight hundred and sixty.

"Present, the Honorable Ogden Hoffman, district judge.

"THE UNITED STATES } In land cases, district court, No. 358. Land
"*v.* } Com., No. 129.
"THOMAS O. LARKIN. }

44 "And now at this day the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded; on motion of the attorney of the United States, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land confirmed in the above-entitled cause, appear and intervene for the protection of such interest. The United States attorney and John B. Williams appeared for the United States, and Crockett and Crittenden for the claimants; and no other parties appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered."

Further proceedings having been had in the matter of the survey, on the 16th day of March, 1861, an order of said court was made regarding said survey, approved October 4, 1859, ordered into court as aforesaid, and directing that said survey be set aside, and a new survey made, in accordance with the views expressed in the opinion of said court.

On the 4th of December, 1861, the U. S. district attorney, upon leave granted by the court, filed a petition for rehearing upon the said order of December 4, 1861. On the 26th day of February, 1862, the court "ordered that the case be, and hereby is, open for further testimony on behalf of the United States, and for rebutting testimony on behalf of the claimant." After taking further testimony, the court "or-
45 dered and adjudged that the decision of the court of March 16, 1861, be, and the same hereby is, affirmed." On the 15th of November, 1862, the said court entered an order, in the words and figures following, to wit:

"At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the 15th day of November, in the year of our Lord one thousand eight hundred and sixty-two.

"Present, the Honorable Ogden Hoffman, district judge.

"THE UNITED STATES }
"*v.* } No. 358.
"THOMAS O. LARKIN. }

"This cause came on to be heard on exceptions of the U. S. to the official survey of the land confirmed to the claimant, on the testimony and evidence taken in pursuance of said exceptions, and on the further

evidence taken by the order of the court of February 26, 1862, and counsel for the respective parties having been heard, and due deliberation had, it is now by the court ordered, adjudged, and decreed that the said exceptions be, and the same hereby are, in part sustained,
46 and that the official survey shown by the plat filed Dec. 7, 1859, be, and the same hereby is, set aside as erroneous.

"And it is further ordered that the surveyor-general of the U. S. for Cal'a correct and reform the said survey and location, and return a plat showing the same, in conformity with this order, to this court, for its approval. And it is further ordered that the said survey and location be corrected and reformed as follows: The southern line to be run as indicated on the diseño in the espediente, marked '7, S. D. K.,' and authenticated by the signature and rubric of Michelt'a, by the natural objects thereon represented, and thence northwardly along the Feather River five leagues, the width of said tract lying along the river to be one league, making five square leagues, and no more.

"And it is further ordered that a certified copy of this order be served upon the said surveyor-general by the U. S. marshal.

(Signed) "OGDEN HOFFMAN,
"*Dist. Judge.*"

A new plat of survey having been made, as directed by said decree, was returned into court by E. F. Beale, U. S. surveyor-general for California, on the 9th day of February, 1863; and thereupon the said district court, on the 15th day of January, 1863, entered a decree confirming said survey; which said decree is in the words and figures following, to wit:

47 "THE UNITED STATES
"*v.*
"THOMAS O. LARKIN. } No. 358.

"This cause came on to be heard on the exceptions of the United States to the official survey of the land confirmed to the said Thomas O. Larkin, a certified copy-plat whereof was duly filed December 7, 1859; and the cause having been regularly brought to a hearing, counsel for the respective parties present, and due deliberation had in the premises, it was by the court ordered, adjudged, and decreed that the said exceptions of the United States be in part sustained, and that the surveyor-general of the U. S. for California cause a plat of location to be made, in conformity with the order of the court made and entered November 15th, 1862.

"And it appearing to the court that the said surveyor-general, in pursuance of said order, has returned to the court a plat of location of the land confirmed to said Larkin; which said plat was filed January 12, 1863, it is now ordered, adjudged, and decreed that the tract shown by said plat within the lines shaded brown, and containing $22{,}184\frac{66}{100}$ acres, is a good and valid location of the land confirmed to Thomas O. Larkin, and that the said location be, and the same hereby is, approved and confirmed.

48 "And it is further ordered that the said plat, filed January 12, 1863, and marked 'approved January 15, 1863, Ogden Hoffman, dist. judge,' be attached to and made a part of this decree, for a more full and particular description of the land now finally confirmed to the said Thomas O. Larkin.

(Signed) "OGDEN HOFFMAN,
"*U. S. Dist. Judge.*"

The said survey and plat so confirmed is represented upon the said annexed plat, No. 1, and marked "5th," in red figures, and the land within said survey, as so represented, is colored red on said map or plat, and it embraces the land in controversy in this suit; which said land in controversy is indicated on said map by the words "One league. Land in dispute. Sawyer, J."

The said decree, confirming said survey, was taken to the Supreme Court of the United States on appeal, and subsequently the said Supreme Court, at the December term thereof, A. D. 1864, dismissed said appeal; whereupon the said district court, at a stated term thereof, on the 26th day of June, 1865, upon filing the mandate of the Supreme Court in said cause, entered an order or decree that the decree of said court "made in this cause on the 15th day of January, 1863, approving the official survey by the surveyor-general, as shown by the plat filed herein January 12th, 1863, do stand finally confirmed."

49 Neither the said defendants, nor any of the claimants under the grant to Fernandez, hereinafter mentioned, appeared in any of the said proceedings in the said district court relating to the said location of said Boga grant.

On the 5th day of October, 1865, a patent from the United States Government, in the usual form in similar cases, duly issued to Thomas O. Larkin, his heirs and assigns, in pursuance of the said final decree, to which is attached, as a part of said patent, a copy of said plat and survey as confirmed by said decree of said district court. Said patent recites the presentation of said petition to the land-commissioners by said Larkin, claimant; the said grant from Micheltorena, governor of the department of California; the said confirmation by the departmental assembly; the said decree of confirmation (in hæc verba) of said land-commissioners; the dismissal of appeal from said decree, and leave to proceed as on a final decree by the district court; that the cause was brought before the district court in the matter of survey; the decree of the district court, of January 15, 1863, confirming said final survey, (in hæc verba;) the appeal from said decree, confirming survey to the Supreme Court; the dismissal of said appeal; filing of mandate, and the decree that said survey stand finally confirmed.

It also recites the certificates of the surveyor-general as to the said final location; which certificate is in the words following, to wit:

"U. S. SURVEYOR-GENERAL'S OFFICE,
"*San Francisco, California.*

"Under and by virtue of the provisions of the 13th section of the act of Congress of the 3d of March, 1851, entitled 'An act to ascertain and settle the private land-claims in the State of California,' and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled 'An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June, 1853, and for other purposes;' and whereas the U. S. board of land commissioners to ascertain and settle the private land-claims in the State of California recognized and confirmed the title and claim of Thomas O. Larkin to the tract of land designated as 'Boga,' and the appeal from said decision was vacated, as appears by a certificate thereof of the U. S. district court, a copy of which is hereto annexed, and thereby the said decision of the said board of land-commissioners has become final. The said tract was surveyed in conformity to the final decree of the U. S. district court, which decree has become final, as will appear by the certified copy of the mandate of the United States Supreme Court,

a copy of which is hereto annexed, and I do hereby certify the accompanying map to be a true and accurate plat of the said tract of land as so finally confirmed. And I do hereby further certify that, under and by virtue of the said confirmation and other proceedings had in the matter, the said Thomas O. Larkin is entitled to a patent from the United States, upon the presentation hereof to the General Land-Office, for the said tract of land called 'Boga,' the same being bounded and described as follows, to wit:

(Here follows a full description, by field-notes, with the plat, as finally located, annexed.)

"In testimony whereof I have hereunto signed my name and caused the seal of the said office to be affixed at the city of San Francisco, this 15th day of July, A. D. 1865.

"L. UPSON,
"*U. S. Surveyor-General.*"

And the patent then purports to convey the land in the usual form.

In the body of the patent, also, after the recitals, and before the granting clause, is found, in brackets, a note as follows, to wit:

["NOTE.—The survey, described in the foregoing of the Boga rancho, confirmed as aforesaid to Thomas O. Larkin, conflicts on the northern part thereof to the extent and for the parcel of land indicated on the foregoing transcript plat by a green shade with the Fernandez rancho, which latter claim has been confirmed, and a patent issued therefor, under date October 14, 1857, to Dionisio Fernandez, Maximo Zenon Fernandez, Josiah Beeden, and William R. Basham, the extent of conflict being also shown on the foregoing plat by the parcel included in the figure A, B, C, D, in red-ink, added by the General Land-Office."]

Said patent also, immediately succeeding the granting clause, contains the following clause, to wit: "But, with the stipulation that, in virtue of the 15th section of the said act, the confirmation of this claim and this patent 'shall not affect the interests of third persons,' and consequently shall not affect any valid adverse right, if such exists, to such portion of the land as may be covered by the Fernandez rancho, patented as aforesaid."

The said patent includes the land in controversy. The land so patented being the same designated "5," in red figures, and shaded red on said map.

The plaintiff, by proper mesne conveyances from the heirs of said Thomas O. Larkin, has acquired an undivided three-fourths interest in whatever title to said premises in controversy accrued to Larkin and his heirs, by virtue of said Mexican grant, said proceedings for confirmation and survey and said patent, and, at the commencement of this suit, he was seized of said interest.

The defendants are in possession of the tracts of land described in the complaint, and the value of said land exceeds the sum of five thousand dollars.

On the 19th day of March, 1852, Dionisio Fernandez, Maximo Fernandez, Josiah Beeden, and William R. Basham, as claimants, filed their petition under said act of 1851, with the said board of land-commissioners, in which they claimed a confirmation of their title to a tract containing four square leagues of land situate in the said county of Butte, and State of California, said claim being founded on a Mexican grant purporting to have been made by Pio Pico, governor of California, to Maximo and Dionisio Fernandez on the 12th day of June, A. D. 1846.

The annexed exhibit, marked "B," is a copy of the translation of the espediente, together with a copy of the diseño presented with the petition of the said claimants and filed with the said board of land-commissioners in said cause. Said claim was confirmed to said claimants for four square leagues of land, on the 17th day of July, A. D. 1855, by a decree of said board of land-commissioners.

An appeal was taken from said decree to the United States district court for the northern district of California, and such proceedings were thereupon had in said district court that on the 2d day of March, 1857, the said decreé of the said board of land-commissioners confirming said claim was in all things confirmed by a decree of said court; which decree is as follows, to wit:

"Ordered, adjudged, and decreed that the said decision be, and
54 the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of four square leagues, being the same land described in the grant and of which possession was proved to have been enjoyed, provided that the said quantity of four square leagues now confirmed to the claimants be contained within the said boundaries called for in said grant and the maps referred to; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity."

The Attorney-General of the United States having given notice that no further appeal would be prosecuted, the said district court, in pursuance thereof, on the 9th day of March, 1857, entered a further decree, by which it was "ordered, adjudged, and decreed that the claimant have leave to proceed under the decree of this court, heretofore ordered, as under a final decree" and thereby said decree of confirmation became final.

And thereupon John C. Hays, United States surveyor-general for the State of California, proceeded to survey and locate, and did survey and locate, said four square leagues of land, so confirmed to said claimants, and on the 29th day of May, 1857, he approved a plat of
the said survey and location so made, and transmitted to and
55 filed with the Commissioner of the General Land-Office of the United States a duly certified and authenticated copy of said final survey; and thereupon, the said survey, having been approved by the Commissioner of the General Land-Office, a patent of the United States, in the usual form in similar cases, was duly issued to said claimants, Dionisio Z. Fernandez, Maximo Z. Fernandez, Josiah Beeden, and William R. Basham, their heirs and assigns, on the 14th day of October, 1857, in accordance with said final survey and location, and the said land, as so surveyed and patented, is represented on the said annexed plat, No. 1, and is the same included in the lines shaded yellow on said plat and thereon designated 2d in yellow figures. Said patent recited the presentation of said claim to the said board of land-commissioners, the decree, survey, and other proceedings herein set forth, and purported to grant and convey the land described in said plat and survey, and said patent following the granting clause therein, contained the following clause or provision, to wit: "But with the stipulation that, in virtue of the 15th section of the said act, the confirmation of this said claim and this patent 'shall not affect the rights of third persons.'"

The land in controversy is included in said patent, being the south league of the land described in said patent, the same land being the

north league embraced in the said patent to Thomas O. Larkin,
56 the said league of land in controversy being embraced in both of said patents.

The defendants have respectively acquired all the title to the respective parts of said land described in their respective answers, derived under said grant to Dionisio and Maximo, and the said proceedings for confirmation and patent of the United States issued thereunder.

Said defendants acquired their title from said grantors to the respective portions of said land described in the respective answers in the year 1852, and ever since the said year 1852, and since the date of said patent, till the commencement of this action, they have respectively been in the open, continuous, exclusive, and adverse possession thereof, claiming title under said Mexican grant, proceedings for confirmation, and patent from the United States.

The said Thomas O. Larkin died on the day of October, A. D. 1858. The said Boga rancho as described in said original grant was distributed to the heirs of Thomas O. Larkin, deceased, by a decree of the proper probate court, on the 5th day of April, 1864, and prior to the said conveyance to said plaintiff.

The said Thomas O. Larkin claimed that his grant called Boga should be surveyed and located as the same was surveyed and located by the said preliminary survey made under the order of the said board of land-commissioners, by S. D. King, U. S. surveyor-general for California, as the same is designated on the annexed plat, No. 1, and as
57 the same was subsequently surveyed and located by J. W. Mandeville, U. S. surveyor-general, and approved by him March 26, 1858, as the same is represented on the annexed plat, No. 1, as aforesaid. And the said Larkin down to the time of his death insisted upon said location.

Said Larkin, at the time of the presentation of his petition, and afterwards, had knowledge of the said grant to Fernandez and of the presentation of said grant to said board of land commissioner' for confirmation, and he was one of the witnesses examined on behalf of the claimants in said proceedings for confirmation.

After the said preliminary survey of the said Boga grant, said Larkin treated the land embraced in said preliminary survey as the land to which he was entitled, under the said grant to Flugge, until the survey made by said J. W. Mandeville, after the confirmation of said grant, approved March 26, 1858; and after said last-named survey, he acquiesced in and claimed said land as located thereby. And in the month of April, 1857, said Larkin sold and conveyed to Messrs. Sparks and Smith about 600 acres of said land as located by said preliminary survey; and at the time of said sale and conveyance, said Larkin represented to said purchasers that his said Boga rancho lay entirely north of the north line of the said lands granted to said Fernandez, as the same were located and patented to said claimants under said grant.

58 Neither the Jimeno nor the Hartnell index, nor the Toma de Razon, nor any other index or record of Spanish grants found in the archives relating to such grant, that have come into the possession of the officers of the Government of the United States, contains any note or memorandum of, or reference to, said grant to Fernandez, under which defendants claim title.

There were some genuine grants, of which there is no notice or evidence in said archives; and some of that class besides the said grant to Fernandez were finally confirmed by said board of land-commissioners, and subsequently patented as so confirmed.

The annexed exhibit, marked "B," is a copy of the translation of the espediente, together with a copy of the diseño presented with the petition of the said claimants and filed with the said board of land-commissioners in said cause. Said claim was confirmed to said claimants for four square leagues of land, on the 17th day of July, A. D. 1855, by a decree of said board of land-commissioners.

An appeal was taken from said decree to the United States district court for the northern district of California, and such proceedings were thereupon had in said district court that on the 2d day of March, 1857, the said decreé of the said board of land-commissioners confirming said claim was in all things confirmed by a decree of said court; which decree is as follows, to wit:

"Ordered, adjudged, and decreed that the said decision be, and
54 the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of four square leagues, being the same land described in the grant and of which possession was proved to have been enjoyed, provided that the said quantity of four square leagues now confirmed to the claimants be contained within the said boundaries called for in said grant and the maps referred to; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity."

The Attorney-General of the United States having given notice that no further appeal would be prosecuted, the said district court, in pursuance thereof, on the 9th day of March, 1857, entered a further decree, by which it was "ordered, adjudged, and decreed that the claimant have leave to proceed under the decree of this court, heretofore ordered, as under a final decree" and thereby said decree of confirmation became final.

And thereupon John C. Hays, United States surveyor-general for the State of California, proceeded to survey and locate, and did survey and locate, said four square leagues of land, so confirmed to said claimants, and on the 29th day of May, 1857, he approved a plat of
the said survey and location so made, and transmitted to and
55 filed with the Commissioner of the General Land-Office of the United States a duly certified and authenticated copy of said final survey; and thereupon, the said survey, having been approved by the Commissioner of the General Land-Office, a patent of the United States, in the usual form in similar cases, was duly issued to said claimants, Dionisio Z. Fernandez, Maximo Z. Fernandez, Josiah Beeden, and William R. Basham, their heirs and assigns, on the 14th day of October, 1857, in accordance with said final survey and location, and the said land, as so surveyed and patented, is represented on the said annexed plat, No. 1, and is the same included in the lines shaded yellow on said plat and thereon designated 2d in yellow figures. Said patent recited the presentation of said claim to the said board of land-commissioners, the decree, survey, and other proceedings herein set forth, and purported to grant and convey the land described in said plat and survey, and said patent following the granting clause therein, contained the following clause or provision, to wit: "But with the stipulation that, in virtue of the 15th section of the said act, the confirmation of this said claim and this patent 'shall not affect the rights of third persons.'"

The land in controversy is included in said patent, being the south league of the land described in said patent, the same land being the

north league embraced in the said patent to Thomas O. Larkin,
56 the said league of land in controversy being embraced in both of said patents.

The defendants have respectively acquired all the title to the respective parts of said land described in their respective answers, derived under said grant to Dionisio and Maximo, and the said proceedings for confirmation and patent of the United States issued thereunder.

Said defendants acquired their title from said grantors to the respective portions of said land described in the respective answers in the year 1852, and ever since the said year 1852, and since the date of said patent, till the commencement of this action, they have respectively been in the open, continuous, exclusive, and adverse possession thereof, claiming title under said Mexican grant, proceedings for confirmation, and patent from the United States.

The said Thomas O. Larkin died on the day of October, A. D. 1858. The said Boga rancho as described in said original grant was distributed to the heirs of Thomas O. Larkin, deceased, by a decree of the proper probate court, on the 5th day of April, 1864, and prior to the said conveyance to said plaintiff.

The said Thomas O. Larkin claimed that his grant called Boga should be surveyed and located as the same was surveyed and located by the said preliminary survey made under the order of the said board of land-commissioners, by S. D. King, U. S. surveyor-general for California, as the same is designated on the annexed plat, No. 1, and as
57 the same was subsequently surveyed and located by J. W. Mandeville, U. S. surveyor-general, and approved by him March 26, 1858, as the same is represented on the annexed plat, No. 1, as aforesaid. And the said Larkin down to the time of his death insisted upon said location.

Said Larkin, at the time of the presentation of his petition, and afterwards, had knowledge of the said grant to Fernandez and of the presentation of said grant to said board of land commissioner' for confirmation, and he was one of the witnesses examined on behalf of the claimants in said proceedings for confirmation.

After the said preliminary survey of the said Boga grant, said Larkin treated the land embraced in said preliminary survey as the land to which he was entitled, under the said grant to Flugge, until the survey made by said J. W. Mandeville, after the confirmation of said grant, approved March 26, 1858; and after said last-named survey, he acquiesced in and claimed said land as located thereby. And in the month of April, 1857, said Larkin sold and conveyed to Messrs. Sparks and Smith about 600 acres of said land as located by said preliminary survey; and at the time of said sale and conveyance, said Larkin represented to said purchasers that his said Boga rancho lay entirely north of the north line of the said lands granted to said Fernandez, as the same were located and patented to said claimants under said grant.

58 Neither the Jimeno nor the Hartnell index, nor the Toma de Razon, nor any other index or record of Spanish grants found in the archives relating to such grant, that have come into the possession of the officers of the Government of the United States, contains any [illegible]e or memorandum of, or reference to, said grant to Fernandez, under which defendants claim title.

There were some genuine grants, of which there is no notice or evidence in said archives; and some of that class besides the said grant to Fernandez were finally confirmed by said board of land-commissioners, and subsequently patented as so confirmed.

And, as conclusions of law:

1st. That the plaintiff's cause of action is not barred by the statute of limitations.

2nd. That the selection by Larkin of the tract as located by the preliminary survey, and by the first survey made after the decree of confirmation became final, his claim of the tract so selected as the land granted to Flugge, and his acts relating thereto, do not estop said Larkin, or those deriving title through him, from now claiming the land as finally located by the district court and patented.

3rd. That the fact that the Fernandez grant was first presented for confirmation, and was first finally surveyed and patented, is not conclusive evidence of title as against the claimants under the Boga grant.

59 4th. That the holders of the Boga grant—it being the elder grant first finally confirmed, with boundaries both in the grant and decree of confirmation so definitely described as to admit of but little variation in the location, and it having been finally located and patented so as to include a portion of the land covered by the patent issued under the Fernandez grant—are "third persons" with respect to the Fernandez grant, within the meaning of the fifteenth section of the act of 1851, and they are not concluded by the prior final location and patent of said latter grant.

5th. That the survey of the Boga grant having been made and approved by the surveyor-general of California, and returned into the district court by order of said court, and proceedings for the purpose of contesting and reforming the same being pending in said court at the date of the passage of the act of Congress of June 14, 1860, relating to the subject, the said district court had jurisdiction, under said act, to revise said survey and determine, by its judgment or decree, the true location of said grant.

6th. That since the exceptions filed to said survey directly affected the interests of the claimants under the Fernandez grant, said

60 claimants were parties in interest, who were authorized and required by the provisions of said act, upon due notice "to intervene for the protection of such interest."

7th. That due notice, admonishing all parties in interest to appear for the protection of their interests, having been given in accordance with the provisions of said act and the rules and practice of said court, and the said claimants under the Fernandez grant having failed to appear, and the default of all parties who did not appear having been duly entered, in pursuance of the rules and practice of said court, the said claimants are bound by said proceedings in the same manner and to the same extent as they would have been bound had they intervened in said proceeding.

8th. That said proceedings are judicial in their nature, and are conclusive upon the parties in interest appearing, or who, being duly admonished, fail to appear, but make default, and their privies; and the proceedings in this case are conclusive upon the defendants as to the true location of the Boga grant.

9th. That the Boga grant being the elder grant, and being correctly located in accordance with the calls of the grant and decree of

61 confirmation, the patent takes effect by relation from the date of the grant and vests the title in the patentees.

10th. That, at the date of the commencement of this action, the plaintiff, by title derived from Thomas O. Larkin, the patentee of the Boga grant, was seized in fee of an undivided three-fourths part of the premises described in the complaint.

11th. That the defendants had no title, and, as against the patentees of the Boga grant, were in the wrongful possession of said premises, and they wrongfully and unlawfully detained the same from the said plaintiff.

12th. That said plaintiff is entitled to a judgment for possession of said premises and for his costs of suit.

Let judgment be entered for plaintiff for possession of the premises described in the complaint and for costs of suit.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Here follow 2 maps marked page 61.)

EXHIBIT A.—*Findings.*

Sello primero, ocho pesos, &c.

MICHELTORENA.
PABLO DE LA GUERRO.

The citizen Manuel Micheltoreno, general of brigade of the Mexican army, adjutant-general of the plana mayor of the same, governor, commandant-general, and inspector of the department of California.

[SEAL.] Whereas Charles William Flugge, Mexican by naturalization, has petitioned, for his personal benefit, for a tract of land consisting of five pastures for black cattle, situate on the westerly side of Feather River, and in the centre of which there is a piece of land called Boga, having its first boundary from the latitude of 39° 33′ 45″ *degrees* north, as appears from the corresponding plan, the necessary preliminaries and investigations having been gone through as directed by the laws and regulations. Exercising the authority in me vested, in the name of the Mexican nation, I have just granted to him the above-
mentioned lands, he abiding by the decision of the honorable
63 departmental assembly, and binding himself to the following conditions:

Firstly. He ought, with all prudence, treat well the Indians who have settled on the said lands, by giving them ideas of sociability, confidence, and civilization, as well as of the Catholic religion, and not impede in them the use which they make of the aforesaid lands for sowing, fishing, etc.

Secondly. He will not be able to sell it, dispose of it, nor mortgage it; impose rent, tax, or any other incumbrance whatsoever upon it.

Thirdly. When the title of ownership shall have been completed to the petitioner he will solicit of the proper judge to give him juridical possession thereof in virtue of this grant, for the which the boundaries thereof shall be marked out, within the limits of which, besides the usual land-marks, fruit-bearing and forest trees of some utility shall be planted.

Fourthly. The land which is hereby granted consists of five pastures for black cattle, as is represented in the plan accompanying the respective expediente. The judge giving the possession shall have it
measured in conformity to the ordinance, the overplus remain-
64 ing to the nation for such uses as may be deemed most proper.

Fifthly. If he shall contravene these conditions, he shall lose his right to the land, and it shall be able to be denounced by another.

In consequence, I order that these presents, being of themselves [illegible]

firm and valid, record thereof shall be taken in the proper book, and that they be delivered to the party interested for his security and other purposes.

Given in Monterey this twenty-first day of February, one thousand eight hundred and forty-four.

(Signed) MAN'L MICHELT'A.
(Do) MAN'L JIMENO, *Trio.*

Due record of this grant has been taken in the proper book, fol. 6.
(Signed) JIMENO.

Filed in office March 24, 1852.
(Signed) GEO. FISHER, *Sec'y.*

65 The citizen Manuel Micheltoreno, general of brigade of the Mexican army, adjutant-general of the staff of the same, governor, commandant-general, and inspector of the department of Californias:

Whereas Charles William Flugge, Mexican by naturalization, has petitioned, for his personal benefit, for a tract of land consisting of five sitios ganado mayor, situate on the westerly side of Feather River, in the centre of which there is a piece of land called Boga, the first boundary of the said land beginning at 39° 33′ 45″ *degrees* north latitude, as appears from the corresponding plan, the necessary preliminaries and investigations having been gone through as directed by the laws and regulations: putting into effect the authority in me vested in the name of the Mexican nation, I have come to the conclusion to grant unto the petitioner the above-mentioned lands, to be subject to the approval of the most excellent departmental assembly, and to the following conditions:

First. He shall, with all prudence, give good treatment to the Indians who are settled about said lands by giving them ideas of sociability and civilization, as well of the Catholic religion, and the use which they may make about the said lands, such as planting, fishing, &c., &c., shall not be prevented to them.

Secondly. He shall not sell it, dispose of it, nor mortgage it; impose rent, tax, or any other incumbrance whatsoever.

66 Thirdly. When the title of ownership shall have been confirmed to the petitioner he shall apply for legal possession to the corresponding authority by virtue of this decree, by whom the boundaries shall be marked out, within the limits of which he shall put, besides the land-mark, some fruit or forest trees of some utility.

Fourthly. The land of which is hereby granted consists of five sitios de ganada mayor, as is represented in the plan attached to the corresponding dispatch. The judge who should give possession shall order it to be measured in conformity to ordinance, and the surplus to remain to the nation for convenient purposes.

Fifthly. Should the petitioner violate these conditions he shall lose his right to the land, and shall be liable to be denounced by another.

In consequence, I order that the present, being held firm and valid, record be taken thereof in the respective book, and that it should be delivered unto the petitioner for his security and other purposes.

Given in Monterey this twenty-first day of February, one thousand eight hundred and forty-four.

(Signed) MANUEL MICHELTORENA.
(Signed) MAN'L JIMENO.

67 Due record has been taken of the above decree in the respective book, fo. 6.
(Signed) JIMENO.

I certify that the foregoing is a true and correct translation.
San Francisco, December 21, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Filed in office Jan'y 5, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Recorded in the book "B" of records of the municipal'y of Monterey, page 34.
March 2d, 1850.
(Signed) W'M S. JOHNSON,
Act'g and Rec'g Clerk.

68 Record of proceedings, at the instance of Don Guillermo Flugge, soliciting the location named "Rio de las Plumas."

N. 349.

To his excellency the hon. commander-general and governor of both Californias:

I, Charles Guillermo Flugge, a native of the kingdom of Hanover, and residing in this department since two years, appear before Y. E., with due respect, and say that inasmuch as I find myself desirous to obtain a tract of land, lying unoccupied, situated on the western side of Feather River, and stretching along ("sobre") the said river from 39° 33′ 45″ northern latitude, to 39° 48′ 45″, and forming on this line a square one league in breadth—it is called Boga, as it is rendered manifest by the adjoining sketch—I entreat Y. E. to design to accede to this request, whereby I will receive mercy.
(Signed) CARLOS GUILLERMO FLUGGE.

MONTEREY, *Dec. the* 31*st*, 1843.

Let the secretary of government report, asking beforehand for what reports he may want for the purpose.
(Signed) MICH.

MONTEREY, *December the* 22*d*, 1843.

69 His excellency the governor directs the preceding instance to be transmitted to Señor Sutter as the party in charge of the frontier of the Sacramento River, in order that he report about its contents.
Monterey, January the 4th, 1844.
(Signed) MANUEL JIMENO.

The tract of land solicited in this petition by Señor Don Carlos Guillermo Flugge, and represented in the adjoining sketch, is unoccupied, and I give this certificate for any convenient ends.
New Helvetia, January the 27th, 1844.
(Signed) J. A. SUTTER,
Court of the Sacramento River District.

EXCELLENT SIR GOVERNOR: I am well informed of the fact that the land solicited lies along ("sobre") the Feather River, where there

is a numerous Indian population, that might feel resentment if it was not made visible to them beforehand that the colonization of those lands is about to be undertaken, and they ought to be preferred in the grants of the lands which they have in occupancy, and those they may want for their benefit and that of their families; by infusing this confidence into their minds, they may more likely be useful than prejudicial to the parties whose lands border on theirs.

70 Your excellency's superior discernment will resolve what may be convenient.

Monterey, February the 20th, 1844.

(Signed) MANUEL JIMENO.

MONTEREY, *February the* 21*st*, 1844.

Let the title be issued, and on it he is to be informed that he shall make use of prudence—treating kindly the Indians population, infusing into their minds confidence, ideas of sociability and civilization, and likewise religious ideas of Catholicism, to the end that, by slow degrees, they may become aware of the welfare resulting to them from the company and friendship.

(Signed) MICHELTORENA.

MONTEREY, *February* 21*st*, 1844.

After having seen the petition at the head of this record of proceedings, the preceding reports, and other steps which were had, and ought to be viewed in conformity with the laws and regulations on the matter, I declare Don Carlos Guillermo Flugge the owner of five square leagues ("sitios de ganada mayor") on the western side of the Feather River, and in the centre of the tract of land called Boga, its first boundary to be reckoned from 39° 33′ 45″ northern latitude.

71 Let the corresponding be issued.

[The remainder is missing.]

Manuel Micheltorena, general of brigade in the Mexican army, adjutant-general in the staff of the same, governor, commander-general, and inspector of the department of Californias.

Whereas Don Carlos Guillermo Flugge, a Mexican by naturalization, has solicited, for his personal benefit, the extent of five square leagues (sitios de ganada mayor) on the western side of the Feather River, and on the centre of a tract of land called the Boga, the first boundary to be from 39° 33′ 45″ northern latitude, as the respective sketch explains. The investigations thereunto concerning having been previously accomplished, according to the prescriptions of the laws and regulations, in the exercise of the authority in me vested in the name of the Mexican nation, I have found expedient to grant to him the mentioned tract of land, subject to the approval of the most excellent departmental assembly and to the following conditions:

1st. He shall prudently treat with kindness the Indians who are settled about said land, infusing into their minds ideas of confidence, sociability, and civilization, and likewise religious ideas of Catholicism; and they are not to be prevented or debarred from the use they

72 may make about the aforementioned location, such as sowing, fishing, &c.

2nd. He shall *have* not alienate or mortgage it, or impose rent, interest, or any other incumbrance.

3rd. When the property be confirmed to him, he shall solicit the respective judge to give to him the juridical possession by virtue of this patent, by whom the boundaries shall be marked out to him, on the limits of which he shall put, besides the land-marks, some fruit-trees or forest-trees of some utility.

4th. The tract of land granted is of five square leagues ("sitios de ganada mayor,") as the respective sketch explains. The judge who should give them possession shall cause it to be measured according to ordinance, and the residue resulting is to remain to the nation for convenient uses.

Consequently I order that the present document, being held as firm and valid, the same be entered in the respective book, and be delivered to the party concerned for his security and other ends.

Given in Monterey, February the 21st, 1844.

To the most excellent departmental assembly of the department of Upper California.

73 Carlos Guillermo Flugge, a Mexican by naturalization, appears with due respect before the excellent departmental assembly, saying, that having received from the Hon. General Manuel Micheltorena the grant of five square leagues ("sitios de ganada mayor") on the western side of the Feather River, on a tract of land called Boga, as it appears by the title herein endorsed, given in Monterey on the twenty-fifth day of February, one thousand eight hundred and forty-four.

He humbly entreats the excellent departmental assembly to grant its approval to said donation, and to admit this petition, written on common paper in the want of stamped paper.

(Signed) C. W. FLUGGE.

ANGELES, *May the* 23*d*, 1845.

ANGELES, *May the* 26*th*, 1845.

Account having been rendered to the excellent assembly in this day's session, with this petition and adjoined title, all was referred to the committee on vacant lands.

(Signed) PIO PICO, *President.*
(Signed) AUGUST OLVERA, *Secretary.*

74 EXCELLENT SIR: The committee on vacant lands having noticed with all possible scrupulosity the record of proceedings at the instance of Don Guillermo Flugge, under date of the 22d day of December, 1843, about the location called Boga, situated on the western side of Feather River, which was granted to him by a title, legally issued by the government of the department under date of the 21st February, 1844, and it resulting from the examination had that the expressed grant in favor of Don Carlos Guillermo Flugge was executed in total conformity with what the laws direct on the subject, the committee, in consequence of what has been related, submits to Y. excellency's deliberation the following proposition:

The grant made to the Mexican citizen by naturalization, Carlos Guillermo Flugge, of the location named Boga, situate on the western side of the Feather River, made in fee on the 21st day of February, 1844, is approved, in entire conformity with the provisions of the law of

August the 18, 1824, and the 5 article of regulations of November the 21st, 1828.

Hall of the committees in the city of Los Angeles.

June the 2d, 1845.

(Signed) IGNACIO DEL VALLE.

ANGELES, *June the 13th*, 1845.

In this day's session the honorable assembly approved the proposition of the preceding opinion ordering that the respective record of
75 proceedings be returned to his excellency the governor for corresponding ends.

(Signed) PIO PICO, *President.*

(Signed) AGUSTIN OLVERA, *S.*

The respective title ("comprobante") was issued to the grantee.

I certify that the foregoing is a true and correct translation.

San Francisco, December 21, 1853.

(Signed) GEO. FISHER, *Sec'y.*

(Here follows map marked page 75.)

76 EXHIBIT B.—*Findings.*

[Translation No. 1.]

To the justice of the peace and military commandant, D. Juan Auguste Sutter.

I certify that the land solicited by the Messrs Fernandez is vacant.

New Helvetia, May 1st, 1846.

(Signed) J. A. SUTTER.

Maximo and Dionisio Zenon Fernandez, Mexican by birth and citizens of Monterey, present ourselves with great respect, and say that, having seen vacant land in the neighborhood of this establishment towards the north and towards the Sierra Nevada, as will appear by the accompanying map, of four sitios de ganada mayor, or four square leagues, we respectfully ask for the necessary information to be transmitted to his excellency the governor of this department, wherefore we pray that what we ask may be granted; by which we shall receive mercy.

New Helvetia, 1st May, 1846.

(Signed) MAXIMO ZENON FERNANDEZ.
DISENICO ZENON FERNANDEZ.

77 [Translation No. 2.]

YERBA BUENA, *May* 12, 1846.

Having seen this document and testimony of the person in charge of the establishment in relation to the application for four square leagues, I have requested two persons who know the land to inform me about the same, and they gave the annexed certificate. The information has not been duly taken, on account of there not being any

To the prefect of the 2d district:

Maximo and Dionisio, Zenon Fernandez, Mexicans by birth, and citizens of Monterey, respectfully appear, and would state that, having seen a vacant tract of land in the neighborhood of the establishment of the Sacramento, to the north, land by the side of the Sierra Nevada, and as said land is situated in a place under your jurisdiction,

authority in that quarter, but the petitioners are qualified; therefore I shall refer the matter to the prefect of the 2 district, who shall resolve as he may deem proper, and will give to the proceedings the convenient course, by virtue of his powers.

(S'g'd) FRANC. GUERRERO.

we solicit information of you relative to the land referred to in the accompanying pe'tion and map, which we have made to the person charged, ad interim, of the said establishment, from whom we obtained a certificate; and in order to give it the most convenient course, we beg of you to grant us the proper information, we may duly proceed to the corresponding proceedings is customary.

Therefore, we beg that your hon. may be pleased to grant us
78 that we have asked, by which we shall receive mercy and favor.
I swear what is necessary, &c.

Yerba Buena, 8th May, 1846.

(Signed) MAXIMO Y. DIONISIO Z. FERNANDEZ.

Please receive this document upon common paper, for there is none of the proper stamp.

[Translation No. 3.]

I, the undersigned, say that in virtue of the investigation and report made in relation to the land asked for by Messrs. Maximo and Dionisio Z. Fernandez, in the neighborhood of the establishment of the Sacramento, I certify that the same is vacant, and that there is no owner of said place. In proof of which I give this writing, at Yerba Buena, May 15, 1846.

(Signed) P. B. READING.

[Translation No. 4.]

I, the undersigned, certify that the place described by the Messrs. Maximo and Dionisio Z. Fernandez, is entirely vacant, and without an owner, nor has it been asked for by any one.

In testimony whereof I give this writing the day of its date.

Yerba Buena, May 15, 1846.

(Signed) GUILLERMO HINCKLEY.

79 [Translation No. 5.]

To the secretary of state:

PREFECT OF THE 2D DISTRICT. Don Dionisio and Maximo Fernandez solicit by their documents the concession in ownership of the four square leagues of land in the neighborhood of the river Sacramento, bounded on the north by the low hills of the Sierra Nevada, by Feather River, and the lands of Don Juan A. Sutter.

This department of the prefect, in view of the evidence that the said land is vacant, and that the applicants possess the legal qualifications, can discover nothing which should prevent the governor of this department from granting the ownership of the said four square leagues. They are therefore recommended to your excellency, and with great respect would state that their petition should be granted in preference to any stranger.

Monterey, May 27, 1846.

(Signed) MANUEL CASTRO.

ANGELES, *June* 12, 184[illegible].

Having examined the petition with which begins I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office, in case No. 109.

U. S. land commission for California, San Francisco, July 26, 1852.

(Signed) GEO. FISHER, *Sec'y.*

80 Pio Pico, constitutional governor of the department of the Californias :

[GOV'T SEAL.] Whereas Maximo and Dionisio Zenon Fernandez, Mexican citizens by birth, have solicited for their personal benefit a tract of unoccupied land, in the vicinity of the river Sacramento, bounded on the north *by the north* by the slopes of the Sierra Nevada; on the south by John A. Sutter's lands, and on the east by Feather River; and the required steps having been taken and information obtained concerning said land, in conformity with the provision of the law of 18 August, 1824, and regulations of 21st November, 1828, I have resolved by decree of this date, in the exercise of the powers in me vested, in the name of the Mexican people, to grant them (the said Maximo and Dionisio Zenon Fernandez) the above-mentioned tract, hereby declaring them proprietors thereof, subject to the approbation of the most excellent departmental assembly, and under the following conditions.

1st. They may enclose it without obstructing the crossings, roads, and rights of way; they shall enjoy the free and exclusive possession thereof, dedicating it to the cultivation or use which they shall deem convenient.

81 2nd. They shall solicit of the proper judge the judicial possession thereof, in virtue of this patent, (despacho,) by whom the limits will be marked out with the requisite landmarks.

3rd. The tract hereby granted is purely four square leagues of land, (cuatro sitios de ganada mayor,) according to the plan accompanying the espediente. The judge who shall give possession shall cause it to be measured according to ordinance, leaving the surplus which there may be to the state, for the proper purposes.

I therefore order that the present title being held as firm and valid, be entered in the corresponding book, and delivered to the parties concerned, for their security and other ends.

Given, in the city of Angel's, (on common paper, for absolute want of the proper stamp,) the 12th day of June, 1846.

PIO PICO.

JOSÉ MATIAS MORENO,
Secretary pro tem.

This superior patent has been entered in the corresponding book.

MORENO.

Translated from the original by Joseph H. Scull, State translator.

(Endorsed:) Filed in office, March 19, 1852. Geo. Fisher, sec'y. Recorded in record of evidence, vol. 19, page 255. Geo. Fisher, sec'y.

(Endorsed:) George R. Bissell v. J. M. Henshaw et al. Findings. Filed 22d April, 1871. L. S. B. Sawyer, clerk.

82 *Judgment.*

In the circuit court of the United States of the ninth circuit in and for the district of California.

GEORGE R. BISSELL. }
v. } No. 260.
J. M. HENSHAW & AL. }

This cause having come on regularly for trial, on the 16 day of August, A. D. 1870, being a day in the June term, 1870, of said court, before the court, sitting without a jury, a trial by jury having been expressly waived by written stipulation of counsel for the respective parties, duly filed with the clerk, W. H. Patterson, esq., appearing on behalf of plaintiff, and R. Aug. Thompson, esq., appearing on behalf of defendants, and the trial having been proceeded with upon the 17th day of said month, and witnesses on the part of the respective parties having been sworn and examined, and the evidence being closed after arguments of counsel, the cause having been submitted to the court for consideration and decision, and after due deliberation thereon, the court having filed its finding in writing, and ordered that judgment be entered in accordance therewith:

Now, therefore, by reason of the law and the finding aforesaid, it is considered that George R. Bissell, plaintiff, do have and recover
83 of and from J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, J. D. Chester, J. J. Clymer, W. M. Ord, P. W. Reim, D. P. Carter, John Doe, Richard Roe, William Stokes, Peter Blue, William Orange, Thomas Clanton, Thomas Holloway, William Wiser, Stewart Chester, Henry Ferix, and Jesse Lutz, defendants, the possession of the entire premises described in the complaint, to wit: All that certain tract of land situate, lying, and being in the county of Butte, in the State of California, being part of the tract of land known as the Boga rancho, finally confirmed and patented to Thomas O. Larkin, and which said part of said rancho is described as follows, to wit: Commencing at the northwestern corner of said Boga Rancho, as finally surveyed and patented, and running thence southerly along the western boundary-line thereof two hundred chains to the southwestern corner of the rancho known as the Fernandez Rancho, as the same was finally surveyed and patented; and thence, at a right angle, easterly along the southern boundary-line of the said Fernandez Rancho, as finally surveyed and patented, to a point on the west bank of the Feather River, and in the eastern boundary-line of the said Bogo Rancho, as finally surveyed and patented, and thence northerly along the said easterly boundary-line of the said Boga Rancho, to the northeastern corner of the said Boga Rancho, as finally surveyed and patented, and thence, at a right angle, westerly along the northerly boundary-line of said Boga Rancho,
84 as finally surveyed and patented, to the point of beginning, being one square league of land, Spanish measure, together with his costs and disbursement in this behalf expended, taxed at three hundred and thirteen dollars and ninety cents; that plaintiff have execution for said costs and a writ or writs of restitution to put and maintain plaintiff in possession of said lands, and to amove defendants and all claiming under them, or either of them, from the possession of the whole of said lands.

Judgment recorded this 22d day of April A. D. 1871.

(S'g'd) L. S. B. SAWYER, *Clerk.*

ANGELES, *June* 12, 184[illegible].

Having examined the petition with which begins I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office, in case No. 109.

U. S. land commission for California, San Francisco, July 26, 1852.

(Signed) GEO. FISHER, *Sec'y.*

80 Pio Pico, constitutional governor of the department of the Californias :

[GOV'T SEAL.] Whereas Maximo and Dionisio Zenon Fernandez, Mexican citizens by birth, have solicited for their personal benefit a tract of unoccupied land, in the vicinity of the river Sacramento, bounded on the north *by the north* by the slopes of the Sierra Nevada; on the south by John A. Sutter's lands, and on the east by Feather River; and the required steps having been taken and information obtained concerning said land, in conformity with the provision of the law of 18 August, 1824, and regulations of 21st November, 1828, I have resolved by decree of this date, in the exercise of the powers in me vested, in the name of the Mexican people, to grant them (the said Maximo and Dionisio Zenon Fernandez) the above-mentioned tract, hereby declaring them proprietors thereof, subject to the approbation of the most excellent departmental assembly, and under the following conditions.

1st. They may enclose it without obstructing the crossings, roads, and rights of way; they shall enjoy the free and exclusive possession thereof, dedicating it to the cultivation or use which they shall deem convenient.

81 2nd. They shall solicit of the proper judge the judicial possession thereof, in virtue of this patent, (despacho,) by whom the limits will be marked out with the requisite landmarks.

3rd. The tract hereby granted is purely four square leagues of land, (cuatro sitios de ganada mayor,) according to the plan accompanying the espediente. The judge who shall give possession shall cause it to be measured according to ordinance, leaving the surplus which there may be to the state, for the proper purposes.

I therefore order that the present title being held as firm and valid, be entered in the corresponding book, and delivered to the parties concerned, for their security and other ends.

Given, in the city of Angel's, (on common paper, for absolute want of the proper stamp,) the 12th day of June, 1846.

PIO PICO.

JOSÉ MATIAS MORENO,
Secretary pro tem.

This superior patent has been entered in the corresponding book.

MORENO.

Translated from the original by Joseph H. Scull, State translator.

(Endorsed:) Filed in office, March 19, 1852. Geo. Fisher, sec'y. Recorded in record of evidence, vol. 19, page 255. Geo. Fisher, sec'y.

(Endorsed:) George R. Bissell v. J. M. Henshaw et al. Findings. Filed 22d April, 1871. L. S. B. Sawyer, clerk.

82 *Judgment.*

In the circuit court of the United States of the ninth circuit in and for the district of California.

GEORGE R. BISSELL.
v.
J. M. HENSHAW & AL. } No. 260.

This cause having come on regularly for trial, on the 16 day of August, A. D. 1870, being a day in the June term, 1870, of said court, before the court, sitting without a jury, a trial by jury having been expressly waived by written stipulation of counsel for the respective parties, duly filed with the clerk, W. H. Patterson, esq., appearing on behalf of plaintiff, and R. Aug. Thompson, esq., appearing on behalf of defendants, and the trial having been proceeded with upon the 17th day of said month, and witnesses on the part of the respective parties having been sworn and examined, and the evidence being closed after arguments of counsel, the cause having been submitted to the court for consideration and decision, and after due deliberation thereon, the court having filed its finding in writing, and ordered that judgment be entered in accordance therewith:

Now, therefore, by reason of the law and the finding aforesaid, it is considered that George R. Bissell, plaintiff, do have and recover
83 of and from J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, J. D. Chester, J. J. Clymer, W. M. Ord, P. W. Reim, D. P. Carter, John Doe, Richard Roe, William Stokes, Peter Blue, William Orange, Thomas Clanton, Thomas Holloway, William Wiser, Stewart Chester, Henry Ferix, and Jesse Lutz, defendants, the possession of the entire premises described in the complaint, to wit: All that certain tract of land situate, lying, and being in the county of Butte, in the State of California, being part of the tract of land known as the Boga rancho, finally confirmed and patented to Thomas O. Larkin, and which said part of said rancho is described as follows, to wit: Commencing at the northwestern corner of said Boga Rancho, as finally surveyed and patented, and running thence southerly along the western boundary-line thereof two hundred chains to the southwestern corner of the rancho known as the Fernandez Rancho, as the same was finally surveyed and patented; and thence, at a right angle, easterly along the southern boundary-line of the said Fernandez Rancho, as finally surveyed and patented, to a point on the west bank of the Feather River, and in the eastern boundary-line of the said Bogo Rancho, as finally surveyed and patented, and thence northerly along the said easterly boundary-line of the said Boga Rancho, to the northeastern corner of the said Boga Rancho, as finally surveyed and patented, and thence, at a right angle, westerly along the northerly boundary-line of said Boga Rancho,
84 as finally surveyed and patented, to the point of beginning, being one square league of land, Spanish measure, together with his costs and disbursement in this behalf expended, taxed at three hundred and thirteen dollars and ninety cents; that plaintiff have execution for said costs and a writ or writs of restitution to put and maintain plaintiff in possession of said lands, and to amove defendants and all claiming under them, or either of them, from the possession of the whole of said lands.

Judgment recorded this 22d day of April A. D. 1871.

(S'g'd) L. S. B. SAWYER, *Clerk.*

A true copy of an original recorded in judgment-register common law, No. 1, pages 468 and 469.

Attest, &c.:

(Signed) L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed 22 April, 1871. L. S. B. Sawyer, clerk.

85 *Certificate to judgment-roll.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing papers, attached together, constitute the judgment-roll in the cause therein entitled.

Attest my hand and the seal of said circuit court, this 29th day of May, A. D. 1871.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE,
Deputy Clerk.

(Endorsed:) No. 260. In the circuit court of the United States for the district of California. George R. Bissell v. J. M. Henshaw et al. Judgment-roll. Filed May 29, 1871. L. S. B. Sawyer, clerk, by J. F F. O'Beirne, D C.

86 *Bond.*

Supreme Court of the United States.

[U. S. int. rev. stamp, $2, cancelled.] [U. S. int. rev. stamp, 50 c'ts, cancelled.]

J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, John Doe Chester, J. J. Clymer, W. M. Ord, P. W. Reim, D. P. Carter, John Doe, Richard Roe, William Stokes, Peter Blue, W'm Orange, James Clanton, Thomas Holloway, William Wieser, Stewart Chester, Frerix, and Jesse Lutz, plaintiffs in error, vs. George R. Bissell, defendant in error:

Know all men by these presents that we, William M. Ord, Pacificus Ord, and Garrett J. Byrne, of the city and county of San Francisco, State of California, are held and firmly bound unto George R. Bissell in the sum of five thousand dollars, to be paid to the said George R. Bissell, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the third day of May, A. D. 1871.

Whereas the above-named William M. Ord, J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, and John D. Chester, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the circuit court of the United States of the ninth circuit, in and for the district of California, on the
87 22nd day of April, 1871, in favor of said plaintiff, and against said defendants.

Now, therefore, the condition of this obligation is such, that, if the above-named William M. Ord, J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, and John D. Chester shall prosecute their said writ of error to effect, and answer all damages and costs if they

shall fail to make their plea good, then this obligation to be void; otherwise the same shall remain in full force and virtue.

W'M M. ORD. [SEAL.]
P. ORD. [SEAL.]
G. J. BYRNE. [SEAL.]

Acknowledged before me this 3d day of May, 1871.

L. S. B. SAWYER,
Com'r U. S. C'r C't.

UNITED STATES OF AMERICA,
District of California, ss:

Pacificus Ord, above named, being duly sworn, deposes and says that he is a resident and freeholder in the city and county of San Francisco, State of California; that he is worth the sum of ten thousand dollars over and above his just debts and liabilities, exclusive of property exempt from execution.

P. ORD.

Sworn to before me this 3d day of May, 1871.

L. S. B. SAWYER,
Com'r U. S. Cir. C't, Dist. Cala.

88 UNITED STATES OF AMERICA,
District of California, ss:

Garret S. Byrne, surety in foregoing bond, being duly sworn, deposes and says that he is a resident and freeholder in the city and county of San Francisco, State of California; that he is worth the sum of ten thousand dollars over and above his just debts and liabilities, exclusive of property exempt from execution.

G. J. BYRNE.

Sworn before me this 3rd day of July, 1871.

JOS. T. O'BEIRNE,
U. S. Comm'r, Dist. of Cal'a.

(Endorsed:)

I approve the form and sufficiency of the within bond.
(S'g'd) OGDEN HOFFMAN,
Dist. Judge.

Filed 3d May, 1871. L. S. B. Sawyer, clerk.

89 *Order amending judgment.*

At a stated term of the circuit court of the United States of America, for the district of California, in the ninth circuit, held at the court-room, in the city of San Francisco, on the 9th day of September, A. D. 1871.

Present, Hon. Lorenzo Sawyer, judge.

GEO. R. BISSELL, PL'FF,
v.
J. M. HENSHAW & AL., DEF'TS.

On reading and filing stipulation of plaintiff, signed by his attorney of record, and on motion of W. H. Patterson, of counsel for the plaint-

iff, it is ordered that the judgment entered herein on the 22d day of April, 1871, be so far modified and corrected as to except from the lands and premises in the complaint and judgment described, the following parcel thereof, to wit: Commencing at the northeast corner of lot No. 2, at a stake in the Feather River, and running thence 280 rods, more or less, on the line dividing the lots Nos. 2 and 3, to a post in the center of the "Marysville and Hamilton Road;" thence running 470 rods, more or less, on the line of said road, to a stake dividing the lands of Henshaw and P. Van Fossen; thence running east five hundred and twenty rods, more or less, on the line of Van Fossen, Chester, and Henshaw, to
90 the Feather River; thence north with the meanderings of said river, to the place of beginning; and that judgment be rendered, dismissing and discontinuing this action as against the defendants, J. M. Henshaw, G. W. Henshaw, W. Henshaw, and A. L. Henshaw, and as to the parcel of land hereinbefore last described; and that the judgment entered herein be so amended and corrected as of the 22nd day of April, 1871.

91 *Order am'd'g judgment.*

At a stated term of the circuit court of the United States of America, or the district of California, in the ninth circuit, held at the court-room, in the city of San Francisco, on Thursday, November 16th, A. D. 1871.

Present, Hon. Lorenzo Sawyer, judge.

GEORGE R. BISSELL
v.
J. M. HENSHAW & AL.

It appearing to the satisfaction of the court the judgment heretofore rendered in the above-entitled cause, to wit, on the 22d day of April, A. D. 1871, was erroneously entered as to certain defendants therein named: In consideration whereof, and of the stipulation of counsel this day filed—

It is ordered that full satisfaction and discharge of said judgment be entered of record in said cause as to all the defendants therein named, with the exception of the defendant, William M. Ord, lessee of P. Ord, and the lands claimed by him, as set forth in this separate answer therein, filed on the 23d day of August, 1867.

92 UNITED STATES OF AMERICA,
Dist. of Cal'a:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, in the ninth circuit, do hereby certify that the foregoing ninety-one written pages, numbered from 1 to 91, both inclusive, are a full and true copy of the record and all the proceedings in the cause therein entitled; and that the same, together, constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court, this 17th day of November, A. D. 1871.

[SEAL.]

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE,
Deputy Clk.

93 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States for the ninth circuit, and district of California, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between George R. Bissell, plaintiff, and J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, John Doe Chester, J. J. Clymer, W. M. Ord, P. W. Reim, D. P. Carter, John Doe, Richard Roe, William Stokes, Peter Blue, William Orange, James Clanton, Thomas Holloway, William Wiser, Stewart Chester, Henry Frerix, and Jesse Lutz, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the

94 parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this first day of December, A. D. 1870, and of the Independence of the United States the ninety-fifth.

[SEAL.] L. S. B. SAWYER,
Clerk of the said Circuit Court.

95 (Indorsed:) Circuit court, U. S., dist. Cal. 260. George R. Bissell vs. J. M. Henshaw et al. Writ of error. Filed 3 May,
1871 L. S. B. Sawyer, clerk.

The answer of the judges of the circuit court of the United States, ninth circuit, district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[SEAL.] L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *D. C.*

96 UNITED STATES OF AMERICA, *ss:*
Supreme Court of the U. States.

In the circuit court of the U. States, 9th circuit, in for the State of California.

J. M. HENSHAW, G. W. HENSHAW, W. Henshaw, L. Van Fossen, John Doe Chester, W'm M. Ord, et al., pl'ffs in error,
vs.
GEORGE R. BISSELL, DEF'T IN ERROR.

Pacificus Ord, being duly sworn, deposes and says that, on the third day of May, 1871, he served a duly-certified copy of the annexed citation

in the above-entitled cause upon Charles H. Sawyer, one of the attorneys of record for defendant in error in said cause, by leaving said certified copy of said citation at his office & place of business as att'y, and handing the same personally to said attorney of record.

P. ORD.

Subscribed and sworn to this 3d day of May, A. D. 1871, before me.
[SEAL.] EDW'D B. COTTER,
U. S. Commissioner.

(Indorsed:) United States of America, ss. Circuit court of the U. States, 9 circuit, for California. J. M. Henshaw et al., pl'ffs in error, vs. George R. Bissell, defendant in error. Affidavit of service of duly-certified copy of citation. P. Ord, p. p. & att'y for pl'ff in error.

97 UNITED STATES OF AMERICA, *ss:*

To GEORGE R. BISSELL, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December, A. D. 1871, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, wherein J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, John Doe Chester, J. J. Clymer, W. M. Ord, P. W. Reim, D. P. Carter, John Doe, Richard Roe, William Stokes, Peter Blue, William Orange, James Clanton, Thomas Holloway, William Wiser, Stewart Chester, Henry Frerix, and Jesse Lutz are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done
98 to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, this 3rd day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-fifth.

OGDEN HOFFMAN,
Dist. Judge.

(Indorsed:) Circuit court, U. States, for California. G. R. Bissell, def't in error, vs. J. M. Henshaw et al., pl'ffs in error. 260. Filed 3 May, 1871. L. S. B. Sawyer, clerk. Citation.

Due service of a true copy of the original acknowledged.
San Francisco, May 3d, 1871.

C. H. SAWYER,
Att'y for Def't in Error.

(Indorsement on cover.) No. 339. J. M. Henshaw, G. W. Henshaw, W. Henshaw, L. Van Fossen, John Doe Chester, J. J. Clymer, W. M. Ord, P. M. Reim, D. P. Carter, et al., plaintiffs in error, vs. George R. Bissell. California. C. C. U. S. Filed 26th January, 1872.

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